



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0662]

RIN 1625-AA00

Safety Zone, Mississippi River, Mile Marker 291 to 295

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River, extending the entire width of the river from Mile Marker (MM) 291.0 to MM 295.0. This safety zone is needed to protect vessel traffic from the safety hazards associated with dredging operations being conducted in the area by the Army Corps of Engineers. When vessels are allowed by the Captain of the Port (COTP), entry into this zone is restricted to one way traffic unless authorized by the (COTP) New Orleans or a designated representative. Any full closures will be announced via Broadcast Notice to Mariners.

DATES: Effective Date: This rule is effective in the CFR on **[Insert date of publication in the Federal Register]**, through

7:00 a.m. September 1, 2012 unless the Army Corps of Engineers dredging operations are completed earlier. This rule is effective with actual notice for purposes of enforcement from 7:00 a.m. July 11, 2012, through 7:00 a.m. September 1, 2012 unless the Army Corps of Engineers dredging operations are completed earlier.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0662]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Chris Norton, U.S. Coast Guard; telephone (225) 298-5400, e-mail Christopher.R.Norton@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
MM	Mile Marker
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

A temporary safety zone is needed to establish periods of complete closure and a one way traffic pattern due to dredging operations in the vicinity of Tunica Bend, Lower Mississippi River Mile Markers 291.0 to 295.0. There will be no passing, meeting, or overtaking of any vessel in the channel.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice of two groundings occurring on July 05, 2012, and July 09, 2012, at MM 293.3 LMR. Due to the low water and the width of

navigational channel the Army Corps of Engineers will be conducting dredging operations in the area. It would be impracticable and contrary to public interest to complete the NPRM process for this rule. Due to the recent groundings and low water, immediate action is necessary to protect vessel traffic from the hazards associated with transiting this area.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause also exists for making this rule effective less than 30 days after publication in the Federal Register. This temporary safety zone is needed to allow the Army Corps of Engineers to conduct dredging operations to prevent further possible groundings due to low water. Delaying the effective date of this safety measure is contrary to the public interest because immediate action is necessary to protect vessel traffic from the hazards associated with transiting this area.

B. Basis and Purpose

On July 05, 2012, and July 09, 2012, the Coast Guard received reports of two groundings at MM 293.3 LMR in the vicinity of Tunica Bend. To prevent groundings of vessels due to the low water the Army Corps of Engineers will be conducting dredging operations. The river will be restricted to one way vessel traffic from MM 291 to MM 295 LMR. The Coast Guard determined the safety zone is needed to protect vessel traffic transiting in the

vicinity of Tunica Bend.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones. To safeguard persons and property from the hazards associated with dredging operations performed on a waterway, the COTP New Orleans will establish a safety zone on the LMR from MM 291.0 to MM 295.0, 7:00 a.m. July 11, 2012, until 7:00 a.m. September 1, 2012.

C. Discussion of Comments, Changes and the Final Rule

The Captain of the Port New Orleans will implement a Safety Zone on the LMR extending the entire width of the river from MM 291.0 to MM 295.0. When vessels are allowed by the Captain of the Port (COTP), entry into this zone is restricted to one way traffic unless authorized by the COTP New Orleans or a designated representative. Any full closures will be announced via Broadcast Notice to Mariners.

The Captain of the Port New Orleans can be reached at 225-281-2875. The U.S Government Dustpan Dredge JADWIN can be contacted at 601-631-5795 or Channel 67. Mariners will be subject to requirements that will be listed in Marine Safety

Information Bulletins from 7:00 a.m. on July 11, 2012 until 7:00 a.m. on September 1, 2012, unless the Army Corps of Engineers dredging operations are completed earlier.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule establishes additional safety restrictions necessary for transit on the LMR from MM 291.0 to MM 295.0, in the vicinity of Tunica Bend. These additional safety restrictions do not prevent safe transit through the area. Due to its duration and limited scope, this rule does not pose a significant regulatory impact.

Additionally, notifications of this rule's effective dates and times and any changes to the rule will be made to the marine community through Marine Safety Information Bulletins (MSIB) or Broadcast Notices to Mariners (BNM).

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the LMR between MM 291.0 and MM 295.0 from 7:00 a.m. on July 11, 2012, until 7:00 a.m. on September 1, 2012. This safety zone will not have a significant impact on a substantial number of small entities because vessels are still able to transit the area under the established safety restrictions. Additionally, notifications of the safety restrictions and any changes will be made to the marine community through Marine Safety Information Bulletins (MSIB) or Broadcast Notices to Mariners (BNM).

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule establishes a temporary safety zone on the Mississippi River to protect vessel traffic from potential safety hazards associated with the Army Corps of Engineers dredging operations. An environmental analysis checklist supporting this determination

and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

2. A new temporary § 165.T08-0622 is added to read as follows:

§ 165.T08-0622 Safety Zone; Mississippi River, Mile Marker 291 to 295.

(a) Location. The following area is a safety zone: All waters of the Lower Mississippi River (LMR) beginning at mile marker (MM) 291.0 and ending at MM 295.0, extending the entire width of the river, in the vicinity of Tunica Bend.

(b) Effective Date. This section is effective from 7:00 a.m. July 11, 2012, until 7:00 a.m. September 1, 2012, unless the Army Corps of Engineers dredging operations are completed earlier. This rule is effective with actual notice for purposes of enforcement beginning at 7:00 a.m. on July 11, 2012.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, when vessels are allowed by the Captain of the Port (COTP), entry into this zone is limited to one way traffic unless vessels are otherwise authorized by the Captain of the Port New Orleans or designated representative.

(2) Persons or vessels requiring entry into or passage through this zone must utilize the one way traffic pattern or otherwise request permission from the Captain of the Port New Orleans or a designated representative. The Captain of the Port New Orleans can be reached at (504) 365-2200.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard assigned to

units under the operational control of Sector New Orleans.

(d) Informational Broadcasts. The Captain of the Port, New Orleans or a designated representative will inform the public through Broadcast Notices to Mariners and/or Marine Safety Information Bulletins of the safety zone, any closures, implementation of one way traffic patterns, and tow sizes or draft restrictions until the river is fully reopened.

DATED: 11 July 2012

P.W. Gautier,
Captain, U.S. Coast Guard
Captain of the Port New Orleans

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